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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
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9 TOMMY RODGERS,

10 Plaintiff,

11 v.

12 NANCY A. BERRYHILL, Acting
13 Commissioner of Social Security,

14 Defendant.

15 NO. C17-5476-JPD

16 ORDER REVERSING AND
17 REMANDING FOR FURTHER
18 ADMINISTRATIVE PROCEEDINGS

19 Plaintiff Tommy Rodgers appeals the final decision of the Commissioner of the Social
20 Security Administration (“Commissioner”) which denied his applications for Disability
21 Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI
22 of the Social Security Act, 42 U.S.C. §§ 401-33 and 1381-83f, after a hearing before an
23 administrative law judge (“ALJ”). For the reasons set forth below, the Court ORDERS that the
24 Commissioner’s decision be REVERSED and REMANDED for further proceedings.

25 I. FACTS AND PROCEDURAL HISTORY

26 At the time of the administrative hearing, plaintiff was a forty-one year old man with a
27 tenth grade education. Administrative Record (“AR”) at 45. Plaintiff did not obtain his GED,
28 and asserts that he was enrolled in special education classes throughout school. AR at 45, 515-
29 16. His past work experience includes part-time employment as a retail stocker, gas station

1 cashier, and fast food worker. AR at 46-48, 64, 227, 233. Plaintiff was last gainfully
2 employed in December 2012. AR at 48.

3 On August 9, 2013, plaintiff filed applications for SSI payments and DIB, alleging a
4 disability onset date of September 30, 2012. AR at 19, 42. Plaintiff asserts that he is disabled
5 due to a brain injury following a clipped aneurysm. Specifically, plaintiff sustained a head
6 injury in a motor vehicle accident in September 2013, and then developed an unruptured brain
7 aneurysm, for which he underwent surgery in January 2014. AR at 318, 378-80, 387, 392-93,
8 399. Plaintiff claims that he has been unable to work since the surgery. Plaintiff reports that
9 his symptoms include depression, memory loss, dizziness, fatigue, angry outbursts, and
10 migraines. AR at 41, 49-52.

11 The Commissioner denied plaintiff's claim initially and on reconsideration. AR at 19.
12 Plaintiff requested a hearing, which took place on November 19, 2015. AR at 37-75. On
13 February 1, 2016, the ALJ issued a decision finding plaintiff not disabled and denied benefits
14 based on his finding that plaintiff could perform a specific job existing in significant numbers
15 in the national economy. AR at 16-31. Plaintiff's request for review of the ALJ's decision
16 was denied by the Appeals Council, AR at 1-7, making the ALJ's ruling the "final decision" of
17 the Commissioner as that term is defined by 42 U.S.C. § 405(g). On June 22, 2017, plaintiff
18 timely filed the present action challenging the Commissioner's decision. Dkt. 4.

II. JURISDICTION

Jurisdiction to review the Commissioner's decision exists pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3).

III. STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits when the ALJ's findings are based on legal error or not supported by

1 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th
2 Cir. 2005). “Substantial evidence” is more than a scintilla, less than a preponderance, and is
3 such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
4 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750
5 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in
6 medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*,
7 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a
8 whole, it may neither reweigh the evidence nor substitute its judgment for that of the
9 Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is
10 susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that
11 must be upheld. *Id.*

12 The Court may direct an award of benefits where “the record has been fully developed
13 and further administrative proceedings would serve no useful purpose.” *McCartey v.*
14 *Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002) (citing *Smolen v. Chater*, 80 F.3d 1273, 1292
15 (9th Cir. 1996)). The Court may find that this occurs when:

16 (1) the ALJ has failed to provide legally sufficient reasons for rejecting the
17 claimant’s evidence; (2) there are no outstanding issues that must be resolved
18 before a determination of disability can be made; and (3) it is clear from the
record that the ALJ would be required to find the claimant disabled if he
considered the claimant’s evidence.

19 *Id.* at 1076-77; *see also Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000) (noting that
20 erroneously rejected evidence may be credited when all three elements are met).

21 IV. EVALUATING DISABILITY

22 As the claimant, Mr. Rodgers bears the burden of proving that he is disabled within the
23 meaning of the Social Security Act (the “Act”). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th
24 Cir. 1999) (internal citations omitted). The Act defines disability as the “inability to engage in

1 any substantial gainful activity" due to a physical or mental impairment which has lasted, or is
2 expected to last, for a continuous period of not less than twelve months. 42 U.S.C. §§
3 423(d)(1)(A), 1382c(a)(3)(A). A claimant is disabled under the Act only if his impairments are
4 of such severity that he is unable to do his previous work, and cannot, considering his age,
5 education, and work experience, engage in any other substantial gainful activity existing in the
6 national economy. 42 U.S.C. §§ 423(d)(2)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098-
7 99 (9th Cir. 1999).

8 The Commissioner has established a five step sequential evaluation process for
9 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§
10 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At
11 step five, the burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled at
12 any step in the sequence, the inquiry ends without the need to consider subsequent steps. Step
13 one asks whether the claimant is presently engaged in "substantial gainful activity." 20 C.F.R.
14 §§ 404.1520(b), 416.920(b).¹ If he is, disability benefits are denied. If he is not, the
15 Commissioner proceeds to step two. At step two, the claimant must establish that he has one
16 or more medically severe impairments, or combination of impairments, that limit his physical
17 or mental ability to do basic work activities. If the claimant does not have such impairments,
18 he is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does have a severe
19 impairment, the Commissioner moves to step three to determine whether the impairment meets
20 or equals any of the listed impairments described in the regulations. 20 C.F.R. §§ 404.1520(d),
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23 ¹ Substantial gainful activity is work activity that is both substantial, i.e., involves
24 significant physical and/or mental activities, and gainful, i.e., performed for profit. 20 C.F.R. §
404.1572.

1 416.920(d). A claimant whose impairment meets or equals one of the listings for the required
2 twelve-month duration requirement is disabled. *Id.*

3 When the claimant's impairment neither meets nor equals one of the impairments listed
4 in the regulations, the Commissioner must proceed to step four and evaluate the claimant's
5 residual functional capacity ("RFC"). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the
6 Commissioner evaluates the physical and mental demands of the claimant's past relevant work
7 to determine whether he can still perform that work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If
8 the claimant is able to perform his past relevant work, he is not disabled; if the opposite is true,
9 then the burden shifts to the Commissioner at step five to show that the claimant can perform
10 other work that exists in significant numbers in the national economy, taking into consideration
11 the claimant's RFC, age, education, and work experience. 20 C.F.R. §§ 404.1520(g),
12 416.920(g); *Tackett*, 180 F.3d at 1099, 1100. If the Commissioner finds the claimant is unable
13 to perform other work, then the claimant is found disabled and benefits may be awarded.

14 V. DECISION BELOW

15 On February 1, 2016, the ALJ issued a decision finding the following:

- 16 1. The claimant meets the insured status requirements of the Social
Security Act through June 30, 2017.
- 17 2. The claimant has not engaged in substantial gainful activity since
September 3, 2013, the amended alleged onset date.
- 18 3. The claimant has the following severe impairments: status post
communicating artery aneurism clipping, migraine, borderline
intellectual functioning, attention deficit hyperactivity disorder
(ADHD), and affective disorder.
- 19 4. The claimant does not have an impairment or combination of
impairments that meets or medically equals the severity of one of the
listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.
- 20 5. After careful consideration of the entire record, I find that the claimant
has the residual functional capacity to perform light work as defined in
20 CFR 404.1567(b) and 416.967(b). He should not climb ladders,

1 ropes or scaffolds. He can occasionally climb ramps and stairs, kneel
2 and crawl. He can perform simple repetitive tasks. He should not
3 interact with the public. He can have occasional superficial contact
4 with coworkers. He can have few, if any, changes in work setting.

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6. The claimant is unable to perform any past relevant work.

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8. The claimant was born on XXXXX, 1974 and was 38 years old, which
9 is defined as a younger individual age 18-49, on the alleged disability
onset date.²

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11. The claimant has a limited education and is able to communicate in
12 English.

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14. Transferability of job skills is not material to the determination of
15 disability because using the Medical-Vocational Rules as a framework
16 supports a finding that the claimant is “not disabled,” whether or not
17 the claimant has transferable job skills.

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19. Considering the claimant’s age, education, work experience, and
20 residual functional capacity, there are jobs that exist in significant
21 numbers in the national economy that the claimant can perform.

22

23. The claimant has not been under a disability, as defined in the Social
24 Security Act, from September 3, 2013, through the date of this
decision.

14 AR at 21-31.

15 VI. ISSUES ON APPEAL

16 The principal issues on appeal are:

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18. 1. Did the ALJ err in evaluating plaintiff’s testimony?

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20. 2. Did the ALJ err in evaluating the lay witness testimony?

21 Dkt. 10 at 1; Dkt. 14 at 1.

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² The actual date is deleted in accordance with Local Rule CR 5.2, W.D. Washington.

VII. DISCUSSION

A. The ALJ Erred in Evaluating Plaintiff's Testimony

1. Legal Standard for Evaluating the Plaintiff's Testimony

As noted above, it is the province of the ALJ to determine what weight should be afforded to a claimant’s testimony, and this determination will not be disturbed unless it is not supported by substantial evidence. A determination of whether to accept a claimant’s subjective symptom testimony requires a two-step analysis. 20 C.F.R. §§ 404.1529, 416.929; *Smolen*, 80 F.3d at 1281. First, the ALJ must determine whether there is a medically determinable impairment that reasonably could be expected to cause the claimant’s symptoms. 20 C.F.R. §§ 404.1529(b), 416.929(b); *Smolen*, 80 F.3d at 1281-82. Once a claimant produces medical evidence of an underlying impairment, the ALJ may not discredit the claimant’s testimony as to the severity of symptoms solely because they are unsupported by objective medical evidence. *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en banc); *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1988). Absent affirmative evidence showing that the claimant is malingering, the ALJ must provide “clear and convincing” reasons for rejecting the claimant’s testimony.³ *Burrell v. Colvin* 775 F.3d 1133, 1136-37 (9th Cir. 2014) (citing *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012)). See also *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007).

When evaluating a claimant's subjective symptom testimony, the ALJ must specifically identify what testimony is not credible and what evidence undermines the claimant's

³ In Social Security Ruling (SSR) 16-3p, the Social Security Administration rescinded SSR 96-7p, eliminated the term “credibility” from its sub-regulatory policy, clarified that “subjective symptom evaluation is not an examination of an individual’s character[,]” and indicated it would more “more closely follow [its] regulatory language regarding symptom evaluation.” SSR 16-3p. However, this change is effective March 28, 2016 and not applicable to the February 1, 2016 ALJ decision in this case. The Court, moreover, continues to cite to relevant case law utilizing the term credibility.

1 complaints; general findings are insufficient. *Smolen*, 80 F.3d at 1284; *Reddick*, 157 F.3d at
2 722. The ALJ may consider “ordinary techniques of credibility evaluation,” including a
3 claimant’s reputation for truthfulness, inconsistencies in testimony or between testimony and
4 conduct, daily activities, work record, and testimony from physicians and third parties
5 concerning the nature, severity, and effect of the alleged symptoms. *Thomas*, 278 F.3d at 958-
6 59 (citing *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997)).

7 2. *The ALJ’s Reasons for Giving Plaintiff’s Testimony Limited Weight
Were Not Clear and Convincing or Supported by Substantial Evidence*

8 The ALJ found that plaintiff’s “medically determinable impairments could reasonably
9 be expected to cause some of the alleged symptoms,” but “the claimant’s statements
10 concerning the intensity, persistence and limiting effects of these symptoms are not entirely
11 credible for the reasons explained in this decision.” AR at 24-25. Specifically, the ALJ found
12 that (1) plaintiff’s allegations are inconsistent with the medical evidence; (2) plaintiff’s lack of
13 treatment suggests his symptoms are not as serious as alleged; and (3) plaintiff’s activities of
14 daily living are not limited to the extent one would expect, given his complaints of disabling
15 symptoms and limitations. For the reasons discussed below, the Court finds that the ALJ’s
16 reasons were not clear and convincing, or supported by substantial evidence.

17 (a) *Inconsistency with the Medical Evidence*

18 The ALJ summarized plaintiff’s statements regarding his symptoms, including his report
19 of blurry vision and chronic migraines every day, that he could walk a block before needing to
20 rest, that his migraines were so bad he cannot get out of bed and conduct daily functions of
21 living, and that he had headaches “almost every day” and dizziness once a day. AR at 27
22 (citing 50, 52, 262-69, 272-75). The ALJ found that “treatment providers and examiners
23 repeatedly had unremarkable neurologic examinations of the claimant.” AR at 27. For
24

1 example, Dr. McGlothlen found plaintiff had no motor deficits, and ARNP Calderon found he
2 had normal gait and no motor weakness. AR at 319, 324, 333, 338, 349, 390, 392, 394. ARNP
3 Hamilton found he had normal visual acuity, intact balance, full motor strength, no ataxia to
4 cerebellar testing of the upper and lower extremities, and stable gait. AR at 402. Dr. Coor
5 found he had steady gait, negative Romberg, and full strength in the upper and lower
6 extremities. AR at 506-12. Dr. Eaton found he had normal gait. AR at 531-34. The ALJ
7 cited these unremarkable physical examination findings, and concluded that plaintiff's
8 testimony regarding the severity of his symptoms were not fully credible. AR at 27.

9 Similarly, the ALJ found that contrary to plaintiff's allegation that he could pay
10 attention for only five minutes, consultative psychological examiner Dr. Tasmy Bowes found
11 he was alert, responsive and fully oriented, and that he showed no evidence of signs of
12 confusion or lack of awareness. AR at 27, 518. The ALJ also pointed out that on mental status
13 examination ARNP Dean Hamilton found he had "normal attention, concentration and
14 memory", and ARNP Julie Calderon found he had grossly normal intellectual and intact
15 memory. AR at 27, 387-96, 399-403.

16 Plaintiff argues that the ALJ failed to provide clear and convincing reasons for rejecting
17 plaintiff's testimony regarding the changes he experienced after his car accident and brain
18 surgery, including headaches that plaintiff asserts were often debilitating, extreme fatigue,
19 depression, and irritability that led to outbursts and conflicts with others. Dkt. 10 at 4.
20 Specifically, plaintiff contends that the normal neurological findings cited by the ALJ did not
21 actually contradict plaintiff's testimony, as the normal findings "did not address Mr. Rodgers'
22 testimony that he had chronic headaches that sometimes became debilitating, extreme fatigue,
23 and irritability that led to outbursts and conflicts with others." Dkt. 10 at 6.

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1 The Commissioner simply asserts that “plaintiff did not complain of these alleged
2 problems when he saw his treating and examining doctors; therefore, the ALJ did not err in
3 finding Plaintiff’s testimony was inconsistent with the medical record.” Dkt. 14 at 9.
4 However, the ALJ did not rely on a “lack of reporting” his symptoms during his examinations
5 as a reason for discounting plaintiff’s statements. In addition, the Commissioner does not
6 explain how the normal findings cited by the ALJ relating to gait and balance, lack of motor
7 weakness/deficits in the upper or lower extremities, etc., contradicted plaintiff’s testimony
8 regarding symptoms such as migraines, headaches, fatigue, irritability, and dizziness.

9 Similarly, although the ALJ correctly noted that consultative psychological examiner
10 Dr. Tasmyn Bowes found plaintiff alert and oriented and exhibiting no evidence of confusion
11 or lack of awareness during the mental status examination, AR at 27, it is not clear how such a
12 finding contradicts plaintiff’s testimony regarding his inability to concentrate for a sustained
13 period of time. Other aspects of Dr. Bowes’ report appear consistent with plaintiff’s
14 allegations of difficulty sustaining concentration. Her cognitive testing showed an IQ of 75,
15 with “relative weakness in subtests that require freedom from distractibility and sustained
16 concentration.” AR at 518. Dr. Bowes found that plaintiff had “difficulty paying close
17 attention to detail and his processing speed was in the extremely low/borderline range.” AR at
18 518. Dr. Bowes also diagnosed plaintiff with ADHD, which seems consistent with his
19 allegations regarding his ability to sustain concentration. AR at 519. The ALJ does not
20 discuss this aspect of Dr. Bowes’ opinion at all in relation to plaintiff’s allegation that he could
21 only pay attention for about five minutes. AR at 27.

22 Accordingly, inconsistency with the medical evidence was not a clear and convincing
23 reason for the ALJ to reject plaintiff’s testimony regarding his symptoms. On remand, if the
24 ALJ believes that the medical evidence is inconsistent with plaintiff’s statements, the ALJ must

1 better explain his reasoning. Without more, it is not at all clear how plaintiff's "normal gait and
2 no motor weakness," for example, contradict his complaints of migraines, dizziness, and
3 fatigue. Similarly, the fact that plaintiff is "alert and oriented" with "normal concentration and
4 memory" during a brief mental status examination does not refute plaintiff's testimony
5 regarding his difficulty with sustained concentration, especially in light of evidence in the
6 record to the contrary that the ALJ does not acknowledge.

7 (b) *Limited Treatment Record*

8 The ALJ also found that plaintiff's lack of treatment suggested his symptoms were not
9 as serious as alleged, because the medical evidence shows minimal medical treatment and the
10 record shows no history of psychotic hospitalizations or mental health treatment. AR at 27.
11 The ALJ noted that "the claimant also reported he had never participated in mental health
12 treatment of any kind and he had never been hospitalized for mental health difficulties." AR at
13 27 (citing AR at 513-20).

14 Plaintiff's "minimal medical treatment," including his minimal mental health treatment,
15 was not a clear and convincing reason to discount plaintiff's testimony in this case. The ALJ
16 did not discuss the fact that plaintiff did not have access to medical treatment when he was first
17 diagnosed with an aneurysm in September 2013. AR at 387, 392. When plaintiff was able to
18 obtain Medicaid coverage because of the aneurysm, the neurologist to whom he was referred
19 by his doctor did not accept this insurance. AR at 53. His doctor told him that he needed to
20 find a neurologist who accepted his insurance on his own. AR at 53. In October and
21 November 2013, plaintiff received treatment for his neurological symptoms at Valley View
22 Health Center. AR at 378-86.

23 Thus, the ALJ erred by drawing negative inferences regarding plaintiff's symptoms from
24 his failure to seek or pursue regular medical treatment "without first considering any

1 explanation that the individual may provide, or other information in the case record, that may
2 explain infrequent or irregular medical visits or failure to seek medical treatment.” SSR 96-7p,
3 available at 1996 WL 374186. Plaintiff’s “minimal medical treatment” was therefore not a
4 clear and convincing reason for the ALJ to reject plaintiff’s testimony regarding his symptoms.

5 (c) *Activities of Daily Living*

6 The ALJ also rejected plaintiff’s testimony because he found it inconsistent with
7 plaintiff’s self-reported activities of daily living, including feeding and bathing himself,
8 dressing, hygiene, meals, chores, shopping in stores once a month, managing his funds,
9 watching television, spending time with others, and going to the park. AR at 27-28 (citing AR
10 at 262-69, 513-22).

11 Without more, plaintiff’s ability to perform some activities spread out over the course
12 of the week, and go grocery shopping once per month at night, does not support a finding that
13 he could work on a regular and sustained basis. Here, there is no evidence that plaintiff’s level
14 of activity is inconsistent with his claimed limitations, or that plaintiff is able to spend a
15 substantial part of his day engaged in pursuits involving the performance of physical functions
16 that are transferable to a work setting. *See Orn v. Astrue*, 495 F.3d 625, 638-39 (9th Cir.
17 2007). The ALJ did not specifically point to any activities that reasonably contradicted
18 plaintiff’s testimony, or were transferable to a work setting for a substantial part of the day. As
19 discussed below, the ALJ erred in discussing the lay witness testimony in this case, and that
20 testimony supports plaintiff’s description of his limited daily activities. For example, his ex-
21 wife Christal Kamienski reported that plaintiff slept almost all day and did not perform
22 household chores or cook for himself, which was a change from his behavior before his
23 aneurysm. AR at 251. She and the children told him he smelled bad, and he was unable to
24 keep his house clean like before. AR at 59-60. His daughter, Michelle Hannah, reported that

1 plaintiff needed reminders to take care of his personal hygiene, only prepared sandwiches and
2 frozen dinners for himself, and performed limited household chores such as laundry and a bit
3 of vacuuming with reminders. He went to the store only once per month at night to buy frozen
4 dinners. AR at 262-69. His girlfriend Deborah Walters stated that she helped take care of him,
5 as he had problems remembering things like when to eat, shower, and take his medication, and
6 often stayed in bed when he had migraines. AR at 292. The ALJ did not explain how these
7 activities, or plaintiff's ability to watch television and manage his limited funds, contradicted
8 his testimony regarding his symptoms.

9 Accordingly, without a more thorough discussion by the ALJ, plaintiff's daily activities
10 were not a clear and convincing reason, supported by substantial evidence, for the ALJ to
11 reject plaintiff's testimony regarding his symptoms including dizziness, memory problems,
12 migraines, and angry outbursts. On remand, the ALJ shall reevaluate plaintiff's testimony,
13 with the guidance provided by this Order.

14 B. The ALJ Erred in Evaluating the Lay Witness Testimony

15 In order to determine whether a claimant is disabled, an ALJ may consider lay-witness
16 sources, such as testimony by nurse practitioners, physicians' assistants, and counselors, as well
17 as "non-medical" sources, such as spouses, parents, siblings, and friends. *See* 20 C.F.R. §
18 404.1527(f). Such testimony regarding a claimant's symptoms or how an impairment affects his
19 ability to work is competent evidence, and cannot be disregarded without comment. *Dodrill v.*
20 *Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993). If an ALJ chooses to discount testimony of a lay
21 witness, he must provide "reasons that are germane to each witness," and may not simply
22 categorically discredit the testimony. *Dodrill*, 12 F.3d at 919.

23 The ALJ noted that he had considered the statements of plaintiff's ex-wife, Christel
24

1 Kamienski, plaintiff's girlfriend Deborah Walters, and his daughter Michelle Hannah. AR at
2 29 (citing AR at 55-62, 245-52, 292-94). However, the ALJ found that "the statements are
3 given little weight because they essentially repeat the claimant's allegations (e.g. migraines
4 keep him bedridden for days), which are not fully credible for the reasons stated in this
5 decision." AR at 29. The ALJ found that their allegation that plaintiff "has impaired
6 neurologic functioning is inconsistent with the clinical findings of treatment providers and
7 examiners who had unremarkable neurologic examinations of the claimant. In addition, while
8 their statements may reflect their personal observations of the claimant, the medical evidence
9 of record does not support finding greater limitations than those set forth in the above residual
10 functional capacity." AR at 29.

11 As discussed above, the ALJ's reasons for rejecting plaintiff's testimony regarding his
12 symptoms were erroneous. The Court finds that the ALJ also erred by relying on the same
13 invalid reasons to reject the lay witness testimony in this case. The Ninth Circuit has
14 repeatedly noted that friends and relatives in a position to observe a claimant's symptoms and
15 daily activities can provide competent evidence to substantiate medical opinions of record, or
16 to show directly how an impairment affects the claimant's ability to work. *See Sprague v.*
17 *Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987); SSR 06-3p, available at 2006 WL 2329993.
18 However, the ALJ does not appear to have meaningfully considered the lay testimony, which
19 does not merely parrot plaintiff's assertion that "migraines keep him bedridden for days," as
20 the ALJ stated. AR at 29. The lay witness statements describe their observations of plaintiff's
21 limitations and how his functioning has changed since his surgery.

22 For example, Ms. Kamienski testified that plaintiff used to handle all the children's
23 appointments prior to his surgery, but now forgets his children's events and appointments and
24 even gets lost driving in a familiar place. AR at 57, 61-62. She also described severe angry

1 outbursts directed at strangers and his own children, which was a new behavior following his
2 surgery. AR at 58-60. Ms. Walters also observed problems with memory, “getting upset,” and
3 noted that he stayed in bed when he had migraines. AR at 292. Finally, his daughter stated
4 that her father had problems with memory following his surgery, and difficulty remembering to
5 shower, clean his room, and wash his clothes. She had to make sure he took his medication
6 and got to his appointments. AR at 293.

Finally, as discussed above with respect to plaintiff's credibility, the ALJ's general assertion that the lay witness testimony was contradicted by the normal physical examination findings of record is not sufficient where, as here, it is not clear how the examination findings referenced by the ALJ relate to the same symptoms. Accordingly, the ALJ did not provide specific and germane reasons for rejecting the lay witness testimony in this case. This evidence should also be reevaluated on remand.

VIII. CONCLUSION

14 For the foregoing reasons, the Court ORDERS that this case be REVERSED and
15 REMANDED to the Commissioner for further proceedings not inconsistent with the Court's
16 instructions.

DATED this 4th day of January, 2018.

James P. Donohue

JAMES P. DONOHUE
Chief United States Magistrate Judge